

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

MICHAEL DRIGGS
4812 16th Street
Arlington, Virginia 22205,

and

ROBERT MOORE
745 East Riverside Drive
Eagle, Idaho 83616,

and

JANA OREAR
197 Aspin Hill Court
Gardnerville, Nevada 89460,

and

CHRISTIANNE O'MALLEY
4005 Bull Rider Drive
Reno, Nevada 89521,

and

THOMAS MICHAEL LOGAN
1298 Winterberry Cove
Germantown, Tennessee 38138,

and

DAVID LOGAN
1298 Winterberry Cove
Germantown, Tennessee 38138,

and

MEGAN MARX
5446 Ben Park Circle
Parker, Colorado 80134,

and

Civil Action No.

TERRI MUMLEY)
109 East Brushy Valley Drive)
Powell, Tennessee 37849,)
)
and)
)
JOHN ZIMMERLEE)
3342 Brickey Lane)
Marietta, Georgia 30068,)
)
and)
)
CAROL HRDLICKA)
948 North Mayfield Road)
Conway Springs, Kansas 67031,)
)
and)
)
GEORGE PATTERSON)
375 Ruby Street)
Laguna Beach, California 92651,)
)
and)
)
MARK SAUTER)
9512 Beck Court)
Bethesda, Maryland 20817,)
)
and)
)
THE POW INVESTIGATIVE)
PROJECT, INC.)
A Maryland Corporation,)
)
Plaintiffs,)
)
v.)
)
CENTRAL INTELLIGENCE)
AGENCY)
Washington, DC 20505,)
)
Defendant.)
_____)

**COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF
(Violations of Freedom of Information Act, 5 U.S.C. § 552;
Improper Withholding of Operational Files under 50 U.S.C. § 3141(f);
Improper Considerations of Historical Value and Public Interest in
Decennial Reviews of Exempted Operational Files under 50 U.S.C. § 3141(g)(2))**

Preliminary Statement

Plaintiffs bring this action under the Freedom of Information Act, seeking disclosure of CIA records of unrepatriated POWs from the Korean and Vietnam Wars.

Twelve individuals and a non-profit corporation bring this case. Eleven of the plaintiffs lost a family member in one of these wars. In most of the incidents, the government possessed information that the individual was not MIA, but rather was a POW, but withheld that information from the families, and thereafter wrongfully reclassified these men from MIA to KIA.

Jurisdiction and Venue

1. Jurisdiction and venue are appropriate under 5 U.S.C. § 552(a)(4)(B) of the *Freedom of Information Act* ("FOIA"), which expressly provides a venue for FOIA cases in the district where the claimant resides. Venue is also proper under 50 U.S. Code § 3141(g)(3), *Operational files of the Central Intelligence Agency*, providing for "judicial review in the district court of the United States of the district in which any of the parties reside."

Parties

2. Plaintiff Robert Moore lives in Eagle, Idaho. On June 1, 1951, Mr. Moore's brother, Air Force Captain Harry Cecil Moore, piloted an F-51 Mustang when it was shot down over North Korea. Harry was taken prisoner, and thereafter shipped to the Soviet

Union. Robert Moore is Harry Moore's brother. Harry's family tells the story of their search for him in their documentary, *Keeping the Promise Alive*, 2013.

3. Plaintiff Jana Orear lives in Gardnerville, Nevada. Jana Orear is Harry Moore's daughter.

4. Plaintiff Christianne O'Malley lives in Reno, Nevada. Ms. O'Malley is Harry Moore's granddaughter.

5. Plaintiff Thomas Michael Logan lives in Germantown, Tennessee. Mike is Sam Logan's son. On September 9, 1950, Air Force Major Sam Logan was shot down over North Korea. Sam was taken prisoner, and thereafter believed to have been held in the Soviet Union.

6. Plaintiff David Logan lives in Germantown, Tennessee. David is Sam Logan's son.

7. Plaintiff Megan Marx lives in Parker, Colorado. She is Dwight Angell's stepdaughter. On January 18, 1953 Navy Ensign Dwight Angell was aboard a Navy P2V on China's southeastern coast, when it was downed. He is believed to have been taken prisoner, and thereafter to have been led through the streets of Swatow, China, in an anti-American parade.

8. Plaintiff Terri Mumley lives in Powell, Tennessee. She is Lloyd Smith's granddaughter. Lloyd Smith, Jr. was aboard the Navy aircraft with Dwight Angell, and he too safely parachuted into the water and is believed to have been taken prisoner, and may have been the other POW on display in the Chinese anti-American parade.

9. Plaintiff Michael Driggs lives in Arlington, Virginia. He is Robert Bibb's nephew. On July 20, 1950 Master Sergeant Robert Bibb may have been captured in the Battle of Taejon, an early fight in South Korea.

10. Plaintiff John Zimmerlee lives in Marietta, Georgia. Air Force 1st Lieutenant John Henry Zimmerlee served as a navigator aboard a B26C light bomber, when, on March 21, 1952, it crashed, after three of its five crewmembers successfully parachuted out. They were taken prisoner, and last seen in the custody North Korean and Chinese guards. His son, John, is the founder and Executive Director of the Korean War POW/MIA Network. During his 20 years of research, he has helped hundreds of the families of missing men. He co-authored *American Trophies, How US POWs Were Surrendered*, 2013.

11. Plaintiff Carol Hrdlicka lives in Conway Springs, Kansas. Her husband, Air Force Captain David Hrdlicka, piloted an F-105 over Laos on May 18, 1965, when it was shot down. In her book, *Finding David, An American Wife Betrayed by Her Government*, 2012, Carol recounts her decades-long efforts to seek information on David's whereabouts, and to secure his release.

12. Plaintiff George "Luck" Paterson lives in Laguna Beach, California. On May 19, 1967, Luck's brother, Navy Lieutenant James Kelly Patterson, served as a bombardier-navigator on a A-6 Intruder over North Vietnam when it was shot down. Kelly had been taken prisoner, and shipped to the Soviet Union.

13. Mark Sauter lives in Bethesda, Maryland. He has been an investigative journalist and author since 1987. He co-authored four books, including *The Men We Left Behind: Henry Kissinger, the Politics of Deceit and the Tragic Fate of POWs After the Vietnam War*, 1993, and *American Trophies, How US POWs Were Surrendered*, 2013.

14. Mr. Sauter founded the Plaintiff POW Investigative Project, Inc., a 501(c)(3) nonprofit corporation devoted to investigating the fates of United States POWs and MIAs last reported alive in communist captivity but never returned after the Korean, Cold, and Vietnam Wars.

15. Defendant Central Intelligence Agency ("CIA") is an agency within the meaning of 5 U.S.C. § 552(f) of the FOIA, and is in possession and or control of the records which are the subject of this action

FOIA Request

16. On July 12, 2023, plaintiffs submitted a FOIA request to the CIA, a copy of which is attached hereto as Exhibit 1. It seeks disclosure of the following 28 items:

Request 1

For the period of March 16, 1954, through 1961, all records of CIA's efforts in undertaking "clandestine and covert action to locate, identify, and recover those U.S. prisoners of war still in Communist custody."

Request 2

The subject of the attached, redacted, version of the January 5, 1952, *CIA Information Report*, is "Preparations for Exchange of United Nations Prisoners in Central and South China." It relates that, "on 18 December, 13 American and 8 British prisoners of war were transferred," that a source "gave names," that "another source referred to American prisoners in the former US consulate," that there is "another report referring to US prisoners in the Canton area," and there is "a recent report from yet another source...." Please provide an unredacted copy of this Report, together with all intelligence material upon which it was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports.

Request 3

The "main subject" of the attached July 15, 1952 *CIA Cross Reference Sheet* is "Location of Certain Soviet Transit Camps for POW from Korea, Classification Number 383.6 Korea." It reads:

Date of Basic Communication: 15 July 52 f/w

Date of Basic Document: 24 June 53

Brief Summary:

In December it was known that camps for POW captured by the

Communists in Korea had been established, etc. 3-plc'

Classifier 488

Routed to: C.I. File

Typist 488

Date of Classifying 17 Aug 59

Cross Reference Numbers:

040 Central Intelligence Agency

Please produce the referenced:

- (a) July 15 1952 "Basic Communication;"
- (b) June 24, 1953 "Basic Document;"
- (c) Information described as "etcetera;"
- (d) POW information in, or otherwise "Routed to, C.I. File;"
- (e) POW information related to or bearing the "Cross Reference Number 040;" and
- (f) POW information related to or bearing the "Classification Number 383.6 Korea."

Request 4

All records regarding the June 1, 1951 shoot down and capture over North Korea of the American F-51 piloted by U.S. Air Force Captain Harry Cecil Moore, born February 11, 1924, in Elm Grove, West Virginia, service number AO 711850, including information that he was "now a prisoner of war," and that he was held in the Soviet Union and interrogated there.

Request 5

All records Major Samuel Porter Logan Jr., shot down while piloting a B-29 Super Fortress over North Korea on September 9, 1950, declared missing-inaction and presumed dead by the Air Force on March 31, 1954. Major Logan served in the 92nd Bomb Wing, Spokane AFB, 325th Bomb Squadron, 92nd Bomb Group, APO 328.

Request 6

All records concerning Ensign Dwight Clark Angell, USNR service number 552173, born August 17, 1928, who was serving aboard a Navy P2V-5, Squadron VP-22, when it was downed on January 18, 1953.

Request 7

All records concerning Aviation Machinist Mate 1st Class Lloyd Smith Jr., USN service number 6306390, born August 21, 1922. He served aboard a Navy P2V-5, Aviation Squadron VP-22, when the aircraft was downed on January 18, 1953.

Request 8

All records concerning Air Force 1st Lieutenant John Henry Zimmerlee, Jr., service number AO1998932, born on December 6, 1911. Lieutenant Zimmerlee served as navigator aboard a B26C (No. 44-34417) in the Air Force 730th Bomb Squadron, when it was downed on March 21, 1952.

Request 9

All records regarding Master Sergeant Robert Bibb, Army Company C, 3rd Engineer Combat Battalion, 24th Infantry Division, service number RA-19076631, born December 6, 1911, captured on July 20, 1950 in Tuejon, South Korea.

Request 10

All records regarding David Louis Hrdlicka, shot down and captured over Laos on May 18, 1965 while piloting an F-105, initially incarcerated in Sam Neua, Laos, at the Pathet Lao Headquarters, and held in Laos at least as late as 1989.

Request 11

All records regarding James Kelly Patterson, shot down and captured over North Vietnam on May 19, 1967, while serving as navigator of the American F-51 piloted by Captain Eugene McDaniel, including Patterson's incarceration, interrogation, and transportation from North Vietnam to the Soviet Union, where he was held as late as 1991.

Request 12

An unredacted version of the attached July 17, 1952, three-page *CIA Information Report*, the subject of which is "Prisoner-of-War Camps in North Korea and China," subtitled "War Prisoner Administrative Office and Camp Classification," together with the materials upon which this Report was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports.

Request 13

An unredacted copy of the attached December 31, 1953, *CIA Information Report*, regarding a USSR interrogation center in Korea, where, "after interrogation PWs were taken to the USSR," together with the materials upon which this Report was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports.

Request 14

An unredacted copy of the attached March 24, 1954, *CIA Information Report* relating that "some PWs listed as missing were in fact turned over to the Soviets," and "will never be released because they will have learned too much about Soviet PW handling techniques," together with the materials upon which this Report was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports.

Request 15

The unredacted, and complete, version of the attached April 23, 1954, *CIA Information Report*, "Subject Soviet Concentration Camps in the Vorkuta Area."

Request 16

The unredacted, and complete, version of the April 27, 1954, *CIA Information Report* relating "information regarding the presence of US prisoners captured during the Korean War" in camps in Komsomolsk, Magadan, Chita, and Irkutsk, USSR, together with the materials upon which this Report was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports. The first page of this three-page Report is enclosed.

Request 17

The unredacted, and complete, version of the attached December 8, 1955, *CIA Information Report*, "Subject Alleged American Held in Soviet Prison."

Request 18

On January 15, 1992, an individual who had been a KGB officer from 1974 to 1984 appeared at the US Embassy in Helsinki, Finland, and reported that, to "ease his conscience," he was reporting that "three Americans were still being held in the camps of Mordovia in July 1978." The source "added that if necessary, he can provide more detailed information." For reference, a copy of the January 23, 1992 cable from Embassy Helsinki to Secretary of State is attached. Please produce any and all information related to this Report.

Request 19

A complete, and unredacted version of the attached March 9, 1988, *CIA Memorandum* to "US Army Chief, Special Office for Prisoners of War and Missing-in-Action," referencing two 1980 sightings and one 1988 sighting of "31 Caucasians, possibly American prisoners from the Korean war, in the fall of 1979," together with all intelligence material upon which this Report was based, including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports.

Request 20

All records relating to any of the POW/MIAs named in the attached list.

Request 21

Any and all records relating that any POW/MIAs may have been held in the prisons identified in the attached list of Russian prison camps.

Request 22

By order issued on November 28, 1951, the *Combined Command for Reconnaissance Activity Korea*, or "CCRAK," was created. For your reference, two responsive CCRAK records are attached. *See also* *CIA Clandestine Services History* Historical Paper No. 52, "The Secret War in Korea," written in 1964, and declassified 2007, at p. 78:

By the fall of 1951, CIA Headquarters recognized there were great opportunities if more experienced CIA officers were in Korea. Accordingly,

three of the most competent senior clandestine services officers in the Agency were selected: one to be full-time CIA representative and Deputy of CCRAK, another as head of CCRAK's counterintelligence section and doubling as Chief of CIA's counterespionage staff, and the third as Chief of foreign intelligence activities.

For the period beginning June of 1951, and continuing to the present time, please produce all POW records provided to, or receive from, any office of any component of the Department of Defense, including but not limited to:

- (a) CCRAK.
- (b) *Air Force 6004 Air Intelligence Service Squadron* during the tenure of "Project American."
- (c) *Missing in Action Office*, including those provided in response to the attached February 12, 1997 letter from U.S. House of Representative James Talent seeking "intelligence pertaining to American prisoners who were taken to China and the Soviet Union during the war," as well as "(a) the 389 American service members who into the 1980s were listed as unaccounted prisoners of war by the United Nations Command Military Armistice Commission (UNCMAC) and all US Air Force F-86 pilots who remain unrepatriated."
- (d) *Air Force Office of Special Investigations*, or AFOSI.
- (e) *Naval Criminal Investigative Service*, or NCIS.
- (f) *Army Criminal Investigation Command*, or CID.
- (g) *U.S. Army Combined Command Reconnaissance Activities Far East*, or CCRAFE.

Request 23

All POW records prepared by any officer, agent, or employee of the CIA, prepared for the Office of the President, including the *President's Daily Brief*, or PDB, that include information on the possibility of POWs being transferred to the Soviet Union or China.

Request 24

Any records reflecting communications with Members of Congress, or Congressional oversight committees concerning the capture of American airmen during the Korean conflict who may have been transported to the Soviet Union or China, and their presumed fate.

Request 25

All records concerning POWs and KGB defector Yuri (or Yury) Rastvorov, who informed the United States Government that American military personnel were taken to the Soviet Union during the Korean conflict. This request includes an unredacted version of the attached page with the heading, "Terminology."

Request 26

All intelligence material (including reports, analysis, correspondence, signals intelligence, imagery, and live sighting reports) concerning statements made by former Czech general Jan Sejna and other former Czech officials concerning US POWs held, interrogated and experiment on by Czech and Soviet advisors, and thereafter transferred to China, Czechoslovakia, East Germany and the Soviet Union.

Request 27

The withheld-in-full version of the CIA's February 2000 *Review of the 1998 National Intelligence Estimate on POW/MIA Issues and the Charges Levied by A Critical Assessment of the Estimate*.

Request 28

The redacted portions of the November 1998 *Critical Assessment of the 1998 National Intelligence Estimate (NIE) on Vietnamese Intentions, Capabilities, and Performance Concerning the POW/MIA Issue*, by Senator Bob Smith.

17. Plaintiffs' FOIA request asks the CIA to produce these records in electronic format, PDF, pursuant to 5 U.S.C. § 552(a)(3)(B).

**Constructive Exhaustion
of Administrative Remedies**

18. Defendant received plaintiffs' FOIA Request on July 14, 2023.

19. To date, the CIA has failed to respond to plaintiffs' request for information.

20. Plaintiffs have constructively exhausted their administrative remedies by the CIA's failure to respond within twenty working days under 5 U.S.C. § 552 (b)(6)(A)(i).

**Count I
(News Media Status)**

21. Plaintiffs restate paragraphs 1-20 as if fully repeated here.

22. Plaintiffs' FOIA Request seek a news media waiver of search and review fees under 5 U.S.C. § 552 (a)(4)(a)(iii), and a waiver of duplication costs under 5 U.S.C. § 552 (a)(4)(A)(ii)(II). Plaintiff's FOIA Request sets forth the grounds for entitlement to these waivers.

Count II
(Prompt Disclosure)

23. Plaintiffs restate paragraphs 1-22 as if fully repeated here.

24. Plaintiffs have a statutory right to the records they seek, and there is no legal basis for the CIA's refusal to disclose them.

Count III
(Improper Withholding of
Operational Files under 50 U.S.C. § 3141(f))

25. Plaintiffs restate paragraphs 1-24 as if fully repeated here.

26. Plaintiffs' FOIA Request include their request to "kindly include the operational files repositories in the search, pursuant to the exception provided by 50 U.S.C. § 3141. "

27. 50 U.S.C. § 3141(f)(3) states that "when a complaint alleges that requested records were improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission, based upon personal knowledge or otherwise admissible evidence."

28. Attached hereto as Exhibit B is the Affidavit of the former Vice-Chairman of the Senate Select Committee on POW/MIA Affairs, 1989 to 1993, Senator Bob Smith. Mr. Smith wrote that he "personally [has] seen hundreds of classified documents that could and should be released as they pose no national security risk."

29. Attached hereto as Exhibit C is the Affidavit former CIA official Kevin Shipp, whose expertise includes classification authority. Mr. Shipp wrote that "[d]ocuments relating to the fate of POWs, including those transferred to Russia or China, can clearly be released, at least in part, without revealing the identity of any confidential source." Release

would "cause no harm to international relations or ongoing diplomatic activities. Given the age of these records, there is no longer any justification for continuing to treat them as 'operational records' under 50 U.S.C. § 3141."

30. The CIA has "improperly withheld [responsive records] because of improper placement solely in exempted operational files." 50 U.S.C. § 3141(f)(3).

31. 50 U.S.C. § 3141(f)(5) provides plaintiffs the opportunity to propound Request for Admissions.

Count IV
Improper Considerations of Historical Value and
Public Interest in Decennial Reviews of Exempted
Operational Files under 50 U.S.C. § 3141(g)(2)

32. Plaintiffs restate paragraphs 1-31 as if fully repeated here.

33. The CIA Act requires the CIA, every ten years, to review its files to consider "the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein." 50 U.S. Code § 3141 (g), *Decennial Review of Exempted Operational Files*.

34. The CIA Act requires the CIA to review the exemptions in force to "determine whether such exemptions may be removed from any category of exempted files or any portion thereof." *Id.*

35. The CIA Act provides that "a complainant who alleges that the Central Intelligence Agency has improperly withheld records because of failure to comply with this subsection may seek judicial review." 50 U.S. Code § 3141(g)(3).

36. The CIA failure to comply with the disclosure provisions of the CIA Act entitle plaintiffs to judicial review.

WHEREFORE, Plaintiffs respectfully pray that this Court order Defendant Central Intelligence Agency to:

- (1) Grant plaintiff Mark Sauter status as a representative of the news media under 5 U.S.C. § 552(a)(4)(A)(ii)(II);
- (2) Conduct a thorough search for responsive records to include its repositories of operational files;
- (3) Include among its search terms the names of the POW/MIAs in the FOIA Request, as well as the Russian prison camps identified;
- (4) Disclose the information that is redacted in the CIA records provided with the FOIA Request;
- (5) Promptly provide the information to plaintiffs; and
- (6) Pay plaintiffs' reasonable costs and attorneys' fees incurred in the prosecution of this action, under 5 U.S.C. § 552 (a)(4)(E) and 28 U.S.C. § 2412(d).

DATE: August 16, 2023.

Respectfully submitted,

/s/ John H Clarke
John H. Clarke (VSB No. 023842)
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 344-0776
Fax (202) 332-3030
john@johnhclarkelaw.com
Attorney for Plaintiffs